Court at almost any period of time after they have been given, by the simple device of demanding a refund from him and then applying to the Court within three months of his refusal to make one.

The Trustees appealed against the above Judgment.

B. E. Ross and *Ong Huck Lim* for the Appellants.

R. Moor (Crown Counsel) for the Commissioner of Estate Duties.

Poyser, C. J.—The appellants are the trustees of the Will of the late Phuah Hin Leong, and they appeal against a judgment of Aitken J. dismissing a petition by them for the refund of estate duty they paid under protest. The following are the material facts.

The Commissioner of Estate Duties (Straits Settlements) on the 4th of January 1939 certified, under section 30(1) of the Estate Duty Ordinance, that the balance of estate duty payable was $2,909.62. On the 21st January the trustees' solicitor claimed exemption from estate duty in respect of Ong Teng Neoh's (a widow of the deceased) share in the income from the residuary estate. The Commissioner on the 8th of March rejected this claim on the ground that no definite property was limited for this widow's interest; and the trustees paid, on the 22nd of May, the amount claimed by the Commissioner, but on the same day filed a petition in the Supreme Court claiming exemption from estate duty in respect of the above widow's life interest.

The petition was dismissed by Aitken J., and I have not the slightest doubt that he came to a correct conclusion; and for the purpose of this appeal it is only necessary to state that I entirely agree with the following passage in his judgment.

> "I am clearly of opinion that the only appeal which the petitioners could have brought in the circumstances of this case was an appeal against the Commissioner's certificate of the 4th of January 1939. They have omitted to lodge their petition of appeal within the limit of three months from that date, which is the time limit provided by the legislature, and it must therefore be dismissed with costs."

It was argued both before Aitken J. and ourselves that section 34 of the Ordinance read together with section 36(1) permitted of this claim being entertained, but as Aitken J. points out. section 34, which deals with the value of property, has no application to this case. The petitioners' grievance was the Commissioner's certificate in regard to the amount of estate duty payable, not in regard to the value of the estate, and that being the case the application to the High Court should have been made within three months from the date of the certificate, and as this was not done, the petition was rightly dismissed.

I would dismiss the appeal with costs.

McElwaine, C.J. (S.S.)—I concur.

Gordon Smith, Ag. J.A.—I concur.

Appeal dismissed.

[APPELLATE CRIMINAL JURISDICTION]

PEDLOW, J.

August 25, 1939.

RASU v. REX.

[MALACCA CRIMINAL APPEAL No. 15 of 1939]

Criminal procedure—onus of proof.

A Magistrate must not convict an accused merely because he does not believe the story of the defence. Whether he does or does not believe the defence he must be satisfied of the truth of the prosecution's story.

CRIMINAL APPEAL.

Salt for Appellant.

Griffith Jones (Crown Counsel) for the Crown.

The facts and arguments appear sufficiently from the judgment.

Pedlow, J.—delivered a written judgment in which the following occurs:—

The fact that the learned Magistrate called on the accused for his defence shows that he considered a *prima facie* case against him had been made out. He acquitted three of the accused and he called on this accused for his defence. I think in this case he was justified in all the circumstances of the case.

A complaint had been lodged at the police station that the present complainant had assaulted someone else and the police on coming to make inquiries found that the present complainant was himself injured, and he alleged that No. 1 accused had hit him.

There had obviously been a fight of some kind, and the complainant's witness, Suppiah, corroborated the complainant's story that the accused had assaulted him.

The accused denied the assault and told a story which the learned Magistrate did not believe. I can but infer that he did not believe the accused when he said that he did not assault the complainant.

I propose to confirm the conviction.

On the question of sentence, I propose to alter it to one of being bound over in the sum of $50/- for

one month. That will mean in effect that the accused is now a free man as a month's time has already elapsed. I direct that the time should run from the original date of conviction.

I rather gather that this particular magistrate does not seem to consider binding over a very serious punishment.

My experience in this country is that being bound over is intensely disliked by accused persons. On the evidence in this case I would consider a binding over for 12 months as too severe a sentence. Had I tried the case myself I might have bound the accused over for three or four months. I reduce it to one month in this case because I want to draw attention to a certain statement in the Magistrate's grounds of judgment.

I refer to the last sentence:—"And in view of the inaccuracies of the accused's statements I convict him and bind him over for one year in the sum of $50/-".

It is not very clear just exactly what the learned trial Magistrate meant by that and how far the inaccuracies in the accused's statements influenced his opinion as to the truth of the complainant's statements. I would point out that at any rate he considered that a *prima facie* case had been made out before he heard the accused's statements at all. But I wish to emphasize for the guidance of all magistrates, and particularly of men who are new to this country and to their work, that it is not sufficient that the learned Magistrate should not believe the story of the defence. That alone would not justify him in convicting the accused. Quite apart from the fact that he does not believe the defence he must be satisfied of the truth of the prosecution story.

I would like to emphasize this as strongly as I can. The fact that I have altered the sentence means that my present remarks will be brought to the notice of this particular Magistrate, but I would like them to reach all Magistrates.

They must keep this clearly in mind that quite apart from what the defence does or does not do, a Magistrate must be convinced of the truth of the prosecution story before he convicts.

I have no evidence in this case that the learned Magistrate convicted merely because he did not believe the accused's statements. But in view of the way he has expressed himself there is the risk that he may have allowed his mind to have been somewhat unduly influenced by his disbelief of the defence story. But I do not think that was the case.

There was adequate evidence—that of two witnesses, complainant and his witness—from which he could find against the accused. I think he merely expressed himself in an unfortunate manner.

I would just like to add that it would be a great help to the Court if Magistrates in writing their grounds of judgment would inform the Court which witnesses they believe, and to what extent, and which they disbelieve, and to what extent.

It would make the hearing of appeals a much simpler matter.

The conviction is confirmed but I direct that the bond be now cancelled as it has already run for over one month.

Conviction confirmed.

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

July 29, 1939.

G. H. SLOT & COMPANY LIMITED

v.

THE REGISTRAR OF TRADE MARKS S.S.

[ORIGINATING MOTIONS Nos. 26 & 27 of 1939]

Prerogative Writs of Mandamus, Prohibition and Certiorari—Administration of Justice (Miscellaneous Provisions) Act 1938 Sec. 7—Rule 2 of the Preliminary Rules of the Supreme Court 1934.

In respect of the Prerogative Writs of Mandamus, Prohibition and Certiorari the Administration of Justice (Miscellaneous Provisions) Act 1938 and the new English Order LIX did not alter the jurisdiction of the Court but merely prescribed a simpler procedure by which the jurisdiction previously exercised should be exercised. By reason of Rule 2 of the Preliminary Rules of the Supreme Court of the Colony the Supreme Court in the Colony should now follow the simpler procedure introduced in England.

ORIGINATING MOTIONS.

Smith (*Hatchard* with him) for the Plaintiffs.

Gibson (Solicitor-General) for the Defendant.

The facts and arguments sufficiently appear from the Order.

McElwaine, C.J.—The Plaintiffs on the 15th July, 1939, took out Originating Motion No. 26 of 1939 for an order calling upon the Registrar of Trade Marks, Straits Settlements, to show cause why a Writ of Mandamus or, alternatively, why an Order for Mandamus should not issue compelling him to accept